



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOS/163276

PRELIMINARY RECITALS

Pursuant to a petition filed January 16, 2015, under Wis. Stat. § 48.64(4), and Wis. Admin. Code § DCF 56.10(1), to review a decision by the Children's Service Society of Wisconsin in regard to Foster Care, a hearing was held on February 12, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether this ALJ has jurisdiction over a matter already decided by another ALJ's written decision on March 21, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Julie Blount, Foster Care Worker
Children's Service Society of Wisconsin
620 South 76th Street, Suite 120
Milwaukee, WI 53214

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.
2. On March 21, 2014 ALJ Debra Bursinger issued a written decision finding that the agency had properly revoked the petitioner's foster care license.

3. On January 16, 2015 the Division of Hearings and Appeals received the petitioner's request for fair hearing on the revocation of her foster care license. Another foster care license was not issued or revoked between March 21, 2014 and January 16, 2015. The petitioner sought to appeal the revocation of her foster care license already decided by ALJ Bursinger.

DISCUSSION

Claim preclusion (formerly known as res judicata) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as collateral estoppel) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

The petitioner has had her opportunity to contest the revocation of her foster care license. That opportunity was at her fair hearing in front of ALJ Bursinger. The petitioner contested the revocation of her foster care license, and the ALJ issued a very thorough, very lengthy decision addressing all of the issues that the petitioner raised at that hearing.

The petitioner was unhappy with ALJ Bursinger's decision, but stated that she was unable to appeal or ask for a rehearing because she received the decision after both statutory deadlines. The petitioner stated that she was moving at that time. Although I do not find this testimony credible, the petitioner admits that she received ALJ Bursinger's decision in April and did not submit another fair hearing request until the following January. She states that she was busy with other personal matters. I note that this nine month wait is well in excess of any statutory timeframe for either a rehearing or appeal to circuit court.

CONCLUSIONS OF LAW

This ALJ does not have jurisdiction over a matter already decided by another ALJ's written decision on March 21, 2014.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of February, 2015

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 17, 2015.

Children's Service Society of Wisconsin
DCF - Foster Care